



Lobby  
Report

## PRIVACY: CONGRESS EXPECTED TO VOTE CONTROLS

*Privacy: The claim of individuals, groups or institutions to determine for themselves, when, how and to what extent information about themselves is communicated to others."*

—Dr. Alan Westin, *Privacy and Freedom*

With a coalition of liberals and conservatives in and out of government leading the way, Congress is expected before adjournment to complete work on privacy legislation that for the first time would clamp controls on the federal government's collection and dissemination of personal information about individual citizens.

But federal agencies and the White House, while supporting the privacy concepts in the legislation, are lobbying against one proposal that would set up a watchdog panel to see that the agencies follow strict procedures and are seeking amendments that would prevent federal employees and applicants from obtaining their examination and employment investigation results.

The outcome could determine whether President Ford signs a final bill, according to William Phillips, staff director of the House Government Operations Subcommittee on Government Information, which has worked with executive branch officials on the privacy legislation.

Another Government Operations Committee staff source, however, said the panel could report "the most outrageous privacy bill, and in the moment of truth, everyone would go along with it so they wouldn't be on the record in opposition to privacy."

### Transcending Partisanship

House and Senate privacy legislation, which would give Americans access to many of their records maintained by federal agencies, has drawn such diverse proponents as the Domestic Council Committee on the Right of Privacy, headed by President Ford; the American Civil Liberties Union (ACLU); the House Republican Research Committee; Representatives Barry M. Goldwater Jr. (R Calif.) and Edward I. Koch (D N.Y.) and Senators Sam J. Ervin (D N.C.) and Charles H. Percy (R Ill.).

Koch, who along with Goldwater, has been in the forefront of the privacy issue in the House, asserts that the matter of personal privacy and individual rights "transcends political partisanship."

### Differences

While forces lining up behind Senate and House bills agree that individuals have little or no control over the information that is collected about them, strong differences of opinion exist on the best way to check—as Ervin puts it—"the government's voracious appetite for personal information about each of us."

Ervin, along with Goldwater, Koch and others, is convinced that nothing less than a new personal privacy board is required to dictate to federal agencies procedures for

collecting and circulating information about individual citizens.

Ervin's insistence on this point was prompted by a survey of federal data banks conducted by the Senate's Constitutional Rights Subcommittee which he chairs. "Finding about these [data] systems has been difficult, time-consuming and a frustrating experience," Ervin wrote. "The subcommittee met evasion, delay, inadequate and cavalier responses [from certain agencies], and all too often a laziness born of a resentment that anyone should be inquiring about their activities. Some agencies displayed their arrogance by not replying at all. With others, extracting information was like pulling teeth."

A House source, who has worked closely on the privacy issue, put it bluntly: "We don't trust bureaucrats as far as we can spit." The board concept is incorporated in S 3418 introduced by Ervin and pending in the Senate Judiciary Committee.

The Domestic Council Committee on the Right of Privacy, as well as government departments, would place personal information disclosure regulation within the federal agencies. "We're not thrilled with the thought of a privacy board or commission at this point," a spokesman for the panel said.

The committee has been working closely with the House Subcommittee on Government Information, which reported HR 16373 to the full Government Operations Committee Sept. 12. That measure leaves enforcement to the agencies rather than a separate board.

The committee took this approach, Phillips said, because "if you interpose a layer of bureaucracy between citizens and the agencies, you are courting an administrative monstrosity." Once a board is created, Phillips added, "it would be almost impossible to eliminate it."

The ACLU, meanwhile, is avoiding these squabbles altogether, taking the position that any movement on the privacy issue by Congress is a progressive step. "We're awed by any action," said Douglass Lea, director of the organization's Privacy Project, a nonprofit, tax-exempt effort set up to monitor data collection by government and private institutions.

Despite assertions by privacy bill supporters that their proposals are comprehensive, both Senate and House measures provide broad exemptions for files containing national defense, foreign policy and criminal investigation data.

"This is one area where I feel that most proposed privacy legislation has been grossly deficient," Rep. Bella S. Abzug (D N.Y.) told the House April 2 during a colloquy on privacy organized by Goldwater and Koch.

Legislation introduced by Abzug "specifically includes records in this area, because I believe we cannot make an exception of one of the most abused areas and then expect people of this country to feel that we have produced a serious piece of legislation." Under Abzug's proposal, however, records that are being used in active criminal prosecution would not be disclosed.

## Federal Data Banks

Agency	Number of data banks	Number Computerized	Number not reporting number of records	Number of records
ACTION	6	5	0	351,700
Administrative Office of the U.S. Courts	9	9	4	757,000
Appalachian Regional Commission	3	2	3	0
Civil Aeronautics Board	1	1	0	0
Civil Service Commission	13	8	4	18,972,800
Department of Agriculture	6	5	0	5,539,200
Department of Commerce	8	8	3	204,165,500
Department of Defense:				
Department of the Air Force	73	36	13	18,001,109
Department of the Army	385	382	12	34,467,849
Department of the Navy	20	12	6	6,154,368
Miscellaneous Department of Defense offices and agencies	19	13	3	2,626,090
Department of Health, Education, and Welfare	61	60	0	402,428,158
Department of Housing and Urban Development	27	25	6	9,862,305
Department of the Interior	1	0	0	79,800
Department of Justice	19	12	4	139,031,722
Department of Labor	4	3	1	24,000,000
Department of State	2	1	1	243,135
Department of Transportation	18	17	2	6,194,430
Department of the Treasury	46	38	7	155,571,458
Environmental Protection Agency	4	4	0	41,200
Equal Employment Opportunity Commission	5	5	0	131,000
Farm Credit Administration	3	1	0	2,900
Federal Communications Commission	12	12	5	2,253,481
Federal Deposit Insurance Corporation	2	0	0	30,000
Federal Mediation and Conciliation Service	1	1	0	1,000
Federal Power Commission	1	0	0	1,100
Federal Reserve Board	1	0	0	1,369
Federal Trade Commission	1	1	1	0
General Services Administration	2	1	0	119,000,160
Interstate Commerce Commission	1	0	0	1,750
National Aeronautics and Space Administration	1	0	1	26,931
National Credit Union Administration	1	0	1	512
National Science Foundation	4	4	1	375,505
Office of Economic Opportunity	13	13	3	108,360
Office of Emergency Preparedness	2	2	0	1,905,000
Office of Management and Budget	3	2	0	2,083
Railroad Retirement Board	9	4	5	15,468,000
Securities and Exchange Commission	6	6	0	679,500
Selective Service System	1	1	0	14,860,811
Small Business Administration	4	2	0	884,000
Special Action Office for Drug Abuse Prevention	1	0	0	23,000

Tennessee Valley Authority	8	7	3	146,150
U.S. Atomic Energy Commission	6	6	0	1,088,600
U.S. Commission on Civil Rights	3	1	1	379
U.S. Information Agency	2	2	0	17,696
U.S. Postal Service	2	2	0	23,000
U.S. Tariff Commission	2	2	2	0
Veterans Administration	29	21	1	72,604,326
White House	7	4	0	151,940
<b>Total</b>	<b>858</b>	<b>741</b>	<b>93</b>	<b>1,245,699,494</b>

Source: Senate Constitutional Rights Subcommittee

## Privacy Push

While observers say Watergate is responsible in part for the likely passage of a privacy bill this session, Douglass Lea of the ACLU believes the activities of the White House committee on privacy, the Department of Health, Education and Welfare, the ACLU itself and Goldwater and Ervin, among others in Congress, created a "billiard ball effect" on privacy, keeping the issue rolling in the Senate and House.

Liberals have been drawn to the issue, Lea said, because of their "disillusionment that massive record keeping just hasn't worked out, while conservatives "with breathing time after the social unrest of the last few years, have become aware of the potential of a police state."

Although the privacy issue faces few outspoken critics, "pockets of resistance do surface when you get down to specifics," Lea said, referring to amendments regulating the privacy of school records that were included in the 1974 education bill (HR 69—PL 93-380). The provisions barring federal funds to any educational institution or agency that permitted the release of a student's records without parental consent were an anathema to "education data massagers," Lea said.

## Forces Involved

Major centers of activity on the privacy issue are:

- The Domestic Council Committee on Privacy. Established by former President Nixon on Feb. 23, the committee was given responsibility for developing plans to protect an individual's right of privacy.

Under Ford's direction, the committee approved 14 specific proposals July 10 for "immediate action" by federal agencies. Included were initiatives to prohibit military surveillance of civilian political activities, to protect personal bank account records against disclosure to government agents, to safeguard unauthorized disclosure of federal tax returns and build privacy safeguards into federal computers and communications systems.

According to a spokesman for the committee, the panel will review the progress the agencies have made on the proposals at its next meeting this fall.

The committee takes credit for reversing a Nixon White House order that had given the Department of Agriculture permission to examine farmers' tax records, killing a General Services Administration plan for a new government data bank and winning House acceptance of the 1974 education records' privacy amendments.

The committee also has worked closely with the House Government Operations Subcommittee on Foreign Operations and Government Information in developing the privacy bill (HR 16373) sponsored by the panel's chairman, William S. Moorhead (D Pa.). Staff Director Phillips told

the *Wall Street Journal* the White House committee has "probably done as much as anyone to call attention to the dimensions of this issue."

- The House Republican Research Committee Task Force on Privacy. Chaired by Rep. Goldwater, the task force Aug. 21 issued a set of legislative recommendations for combating threats to privacy in the following areas: government surveillance, federal information collection, social security numbers, census information, bank secrecy, consumer reporting, school records, juvenile records, arrest records, medical records and computer data banks.

- ACLU Privacy Project. Launched two years ago, the project serves as a clearing house and monitoring point on privacy matters, supplying reports and information to others working on the issue, including the White House committee, members of the House and Senate and congressional committees. A monthly *Privacy Report* is published by the project, detailing privacy abuses and actions taken by others to gain public attention on data collection.

The tax-exempt project is supported by foundation and business funds, including grants from the Marshall Field Foundation, IBM and Polaroid. The reason IBM is supporting the ACLU effort, according to Lea, is the corporation's "long range interest to see that confidence in the computer is not eroded."

While other private organizations, including the American Trial Lawyers Association have taken some initiative on privacy issues, the ACLU is the most active non-governmental group pursuing the privacy cause. "There are organizations we thought would have lined up with us—Common Cause and Ralph Nader," Lea said. "But they are wary of the issue. They want more disclosure (by government and business), and they seem to think there would be a conflict" by taking an active role on privacy.

The Privacy Project closely observes congressional action on privacy legislation, although the group has refused to take public positions on pending bills because of its tax status. The project, nevertheless, issued a memorandum March 1 outlining six categories of needed privacy legislation, including some 40 separate proposals.

The ACLU suggested that Congress take steps to protect citizens against invasion of their political rights, to protect individuals against abuse of the criminal process, to control wiretapping and computerized data banks and to increase citizens' ability to enforce privacy rights against government and private organizations.

Senator Ervin's forthcoming retirement has distressed the organization, which feels that he "alone has the seniority and influence among his colleagues, the subcommittee chairmanship (Constitutional Rights), the stability of an established political figure and the willingness to take on tough privacy and surveillance issues."

But some civil libertarians, the ACLU noted in its *Privacy Report*, "have sensed in Congress on any privacy issue a lazy 'leave it to Sam' attitude that may be dissipated when Ervin returns to North Carolina." The ACLU believes Ervin's departure may mean that privacy issues will be splintered among several senators with particular interests: Edward M. Kennedy (D Mass.) on military surveillance, Gale W. McGee (D Wyo.) on federal employee rights, Charles McC. Mathias Jr. (R Md.) on criminal justice, Alan Cranston (D Calif.) on bank secrecy and Barry M. Goldwater (R Ariz.) on data banks.

## Congress' Concern

In its Aug. 21 report on privacy, the House Republican Research Committee concluded that the "individual has been physically bypassed in the modern information process" because he is "assumed to waive any and all interest and control over the information collected about him."

Under most information systems, an individual does not really know who has collected data about him or how many agencies or corporations are using it for what purpose, Rep. Goldwater maintains.

### Area of Concern

Republicans cite Bureau of Census data collection and dissemination practices as one major area of concern.

Under penalty of law, each citizen is forced to divulge intimate personal facts about his public and private life, noted the Republican Privacy Task Force. The Census Bureau then sells parts of its collected data to anyone who wishes to purchase the information.

"As the [census] questions become more detailed and extensive, broad-scale dissemination becomes more threatening and frightening," according to the task force. "When used in combination with phone directories, drivers' licenses and street directories, census data may enable any one interested to identify an individual."

While the task force points to census practices as a potential area for privacy abuse, Ervin's Constitutional Rights Subcommittee in a 1974 report on "Federal Data Banks and Constitutional Rights" reported the existence of three "peculiar data banks": Secret Service files on persons who make anti-government remarks or embarrassing statements about government officials; a Department of Health, Education and Welfare blacklist of scientists, and an Army computer system involving political surveillance.

### Basic Lesson

According to the committee's report, "There are immense numbers of government data banks, littered with diverse information on just about every citizen in the country." (*Chart, preceding page*)

But it was the committee's difficulty in determining the actual number and extent of data banks in existence that led Ervin to conclude: "The most basic lesson the subcommittee survey teaches is the absolute necessity of replacing this voluntary survey approach with a statutory requirement that all federal data banks be fully and accurately reported to the Congress and the American people."

The information-gathering impulse of the federal government is mirrored by similar developments in the private sector, according to Sen. Percy, a co-sponsor of Ervin's privacy bill (S 3418).

Credit agencies with their consumer files have proliferated in recent years; educational institutions are beginning the process of computerizing student records; hospital and medical centers are finding computers the answer to much of their record keeping difficulties.

"When such information is stored on tape it is easily transferred from one user to another," Percy said. "The individual has no knowledge of the transfer, and no ability to correct information about himself that could ruin his chances for a new job...or be taken as cause for investigation by a law enforcement agency."

## Which Approach?

The legislative controversy over the impact of federal data banks on individual privacy began in the mid-1960s when proposals to set up a national data bank statistical center were discussed in the executive branch.

Although the idea was abandoned after outcries from the public, press and Congress that the data center would lead the United States directly into "1984," hundreds of bills have been introduced in Congress relating to other personal privacy issues. (In the 93rd Congress through March, 102 House bills on privacy had been introduced with 207 sponsors; in the Senate, various privacy bills were sponsored by 62 members.)

Most of the pending bills are directed to one aspect of the privacy question: they range from banning the disclosure of Social Security numbers to prohibiting financial institutions from disseminating information on their customers to government agencies. Other bills would restrict existing practices of criminal information systems, ban political surveillance by the Army and control illicit uses of wiretapping.

With the introduction of the Ervin and Moorhead bills, privacy forces feel they have found a satisfactory approach to dealing with the central issue raised by the seemingly disparate pieces of legislation.

The common thread, said Percy, is the individual's right to control, how, when and to what extent information about himself is communicated to others.

### Ervin and Moorhead Bills

Under the Ervin bill, an individual could not be forced to disclose any information not required by law, and he

*Federal agencies feel that the federal privacy board plan "would insert a new layer of bureaucracy in their transactions."*

would have to be informed of his right not to disclose. He also would be notified of the existence of any information maintained on him and how the information was used.

In addition, a person would have the right to inspect information pertaining to him and have the right to challenge any information on the basis of its accuracy, completeness or necessity.

The bill also places strict restrictions on the dissemination of information contained in data systems, requiring an agency to request permission from the individual before distributing data about him to those not having regular, authorized access to the information.

But the most controversial part of the measure is the provision establishing a federal privacy board that would have the authority to intercede in the event an agency abuses data information procedures.

The Moorhead bill, on the other hand, which also grants an individual access to his federal records, would depend on self-enforcement by government agencies and, if that failed, by the federal courts.

Federal agencies feel that the federal privacy board plan "would insert a new layer of bureaucracy in their transactions," said Joe Overton, a legislative assistant to Rep. Goldwater. "They are dragging their heels and resisting an invasion on what they see as their traditional prerogatives."

Moorhead's subcommittee staff, Overton added, "believes in privacy, but they are also looking to efficiency in government" which might be affected by privacy board activities.

Staff member Phillips points out that a privacy board would be expensive to set up and "would be open to attack" because of that on the House floor.

"If Congress finds that self-enforcement (by the agencies) is not working, then it can always come back later and say, 'We're going to shove a commission down your throat,'" he added. But the agencies "will take the bill seriously," because there are strong civil and criminal penalties for violations in the measure.

### Outlook

The subcommittee rejected the privacy board plan by a 7-2 vote, but the proposal was expected to be offered again during consideration of HR 16373 by the full Government Operations Committee.

Phillips said, however, that he does not expect the amendment to pass and that it probably faces defeat if offered on the House floor. Should the Senate adopt the idea, the issue then would have to be resolved in conference.

The major area of contention on the House bill is the effort by John N. Erlenborn (R Ill.) to prevent federal employees from gaining access to their examination and employment investigation results. An amendment by Erlenborn to provide these exemptions was defeated Sept. 19 by the Government Operations on a 22-11 vote and is not expected to win approval on the House floor. "I just don't know what Ford will do with a privacy bill that doesn't contain the exemptions," said Phillips.

Another potential trouble spot on the privacy legislation is the inclusion of private as well as federal data banks in the Ervin bill. But there is a certain reluctance by privacy forces to become involved in the regulation of private data banks.

According to the White House privacy committee, "Federal example and experience in this complex field should precede federal directives to the non-federal governmental and private sectors."

Douglas Lea of the ACLU agrees. "There is a lack of knowledge in this area. It would be easy to leap into regulating private activity if you're not careful."

And according to Joe Overton, "You don't want to legislate in the private sector until you know what you're dealing with. Information practices widely vary in the private sector. There's less sharing of data. The federal level is different. With these agencies, it's easier to exchange information."

## Corrections

(Previous corrections, Weekly Report p. 2387)

Page 712, Col. 1—Date in first line should be March 13, not March 14, for Senate passage of S 1401, restoring the death penalty for certain serious federal crimes.

Page 1688, Col. 1—In the ninth line of first paragraph under "Obscenity and Advertisements," the number of persons convicted should be four, not five.

Page 2213, Col. 2—Flag at end of first paragraph under "Question of Pardon" should read 1973 Almanac p. 1063, not p. 1043.

Page 2373, Col. 1—In Minnesota's 2nd Congressional District, Ancher Nelsen (R) has served eight terms, not eight years.